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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)

MM DOCKET NO. 93-107

DAVID A. RINGER)

File Nos. BPH-911230MA

et al.)

et al.

For Construction Permit)

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Channel 280A)

Westerville, Ohio)

JUN 2 1993

To: Administrative Law Judge
Walter C. Miller

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**MASS MEDIA BUREAU'S OPPOSITION TO
MOTION TO ENLARGE ISSUES AGAINST MATCHAK**

1. On May 17, 1993, Ohio Radio Associates, Inc. ("ORA") filed a motion to enlarge issues against Kyong Ja Matchak ("Matchak"). The Mass Media Bureau opposes ORA's motion and submits the following comments.

2. In essence, ORA seeks addition of the following issues:

1. To determine whether Matchak violated Section 73.316 of the Commission's Rules.

2. To determine whether Matchak violated Section 73.215 of the Commission's Rules.

3. To determine whether Matchak proposes a tower site in violation of Section 73.207 of the Commission's Rules.

3. ORA alleges that Matchak violated Section 73.316(c)(1) of the Commission's Rules by not providing the model number of or otherwise sufficiently describing her directional antenna.

However, that provision does not specify when the information is

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to be submitted, and the Bureau's practice is to require such information when a license application (FCC Form 302) is filed. Accordingly, addition of a Section 73.316 issue is not warranted.

4. With respect to the requested Section 73.215 issue, ORA claims that Matchak does not state that she will provide protection to a short-spaced station's contour based on its maximum effective radiated power, contrary to Section 73.215(b)(2)(ii). ORA is mistaken. Matchak did propose to protect WTTF-FM by considering that station's maximum possible facilities. Accordingly, the factual premise underlying ORA's argument about Matchak's compliance with Section 73.215 is wrong, and its arguments are immaterial.


5. With respect to the requested Section 73.207 issue, ORA repeats contentions considered and rejected in the Hearing Designation Order, 8 FCC Rcd 2651 (ASD 1993), and in Memorandum Opinion and Order, FCC 93M-224, released May 4, 1993. Such contentions are ordinarily not subject to reconsideration. See Annax Broadcasting Inc., 87 FCC 2d 483, 486 (1981); Section 1.106(a)(1) of the Commission's Rules. Nonetheless, ORA claims that its arguments warrant renewed consideration because of On the Beach Broadcasting, FCC 93-211, released May 10, 1993. Specifically, ORA contends that On the Beach requires that an applicant proposing use of a directional antenna must demonstrate that no fully-spaced sites are available.

6. ORA is wrong. On the Beach affirmed rejection of an amendment which did not comply with Section 73.215(b)(2)(ii), and in the absence of a valid proposal for use of a directional antenna, found that the applicant did not meet the requirements for a waiver of Section 73.207 of the Commission's Rules. Here, Matchak's proposal complies with Section 73.215 and was processed accordingly. Thus, Section 73.207 is inapplicable, and there was no need for Matchak to seek a waiver of that rule or make the showing necessary for grant of such a waiver. See Amendment of Part 73 - Short-Spacing Criteria, 6 FCC Rcd 5356, 5359-60, ¶¶ 24-27 (1991), where the Commission made clear that, because applications could now provide equivalent co-channel and adjacent channel protection by meeting the spacing, power and directional requirements of Section 73.215, it would no longer allow waivers of Section 73.207. In this regard, the cases cited by ORA, all of which dealt with applications seeking waivers of Section 73.207, are inapposite.

7. Accordingly, the Bureau opposes ORA's motion to enlarge issues.

Respectfully submitted,
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June 2, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, hereby certifies that she has on this 2nd day of June, 1993, sent by regular U.S. mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Opposition to Motion to Enlarge Issues Against Matchak"** to:

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